

REMARKS

Claim 8 has been amended herein to more clearly define the allowable subject matter of the present invention. In the Office action mailed 06/08/05, claims 12-17 were allowed. Claims 1-4, 6, 8,10, 18, 20, 21, 24, 26 were rejected under 35 U.S.C. 102(b) as being unpatentable over Schmidt (U.S. Patent #5,513,185).

With respect to Examiner's Response to Arguments, Applicant offers the following response. Applicant traverses Examiner's characterization that Schmidt discloses a sent counter as claimed in the pending independent claims of the present application. While Examiner has indicated that Schmidt discloses a sent counter as a "q" value which forms such a count as an estimate of the *number* of messages stored in the transmit buffer in conjunction with the clock comparison counter 214 for comparison, Applicant submits that this is an inaccurate characterization of Schmidt. Directing attention to Schmidt at Col. 4, line 34:

"A resulting estimate "q" of the length of the messages queued in the transmit buffer 105 or 115 of FIG. 1 is computed in estimator 205 (in the manner described below) and compared in a comparator 207 with a threshold value T applied on line 210.

Thus, Schmidt uses "q" to measure SIZE of messages TO BE SENT, rather than NUMBER of messages ALREADY SENT. When Schmidt's transmit buffer is larger than a threshold value, a link failure is assumed. This is not the same as counting how many packets have been sent. Rather, it counts how full a buffer containing messages to be sent has become.

Applicant also traverses Examiner's assertion that Applicant's claimed limitation of a sent counter is not defined beyond a count of information sent, not necessarily one

to one, nor any type of information. Directing Examiner's attention to the subject limitation (as appears in claim 8 and in the remaining independent claims of the present patent application, what is claimed is "*incrementing said sent counter when **a packet** is sent to said second node from said first node according to said RTT-based time interval.*"

Thus, not only is this describing a one-to-one count (**A** packet = **ONE** packet), but it also is describing the type of information sent (a packet).

With respect to the 35 U.S.C. 103 (a) rejection of claims 9, 11, 19, 25, and 27, these claims depend from independent claims 8, 10, 18, 24 and 26, respectively, and thus inherit all of the claim limitations of these base claims. Applicant incorporates the arguments presented above for independent claims 8, 10, 18, 24 and 26, and because not all of the claim limitations have been shown to be disclosed by others, not every claim limitation is anticipated by any combination of Schmidt in view of Kant. As such, Applicant submits that the prima facie evidence required by the MPEP to warrant a 35 U.S.C. 103(a) rejection has not been met.

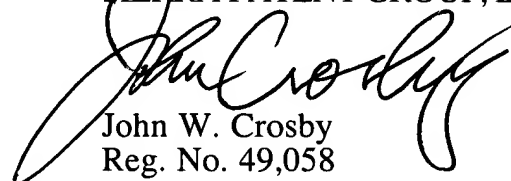
INVITATION TO TELEPHONE CONFERENCE

If any remaining issues exist, the Examiner is invited to call the undersigned attorney at the telephone number listed below.

Date: October 11, 2005

Sierra Patent Group, Ltd.
P.O. Box 6149
Stateline, Nevada 89449
Telephone: (775) 586-9500

Respectfully submitted,
SIERRA PATENT GROUP, LTD.



John W. Crosby
Reg. No. 49,058